

STATE OF MICHIGAN
COURT OF APPEALS

JOYCE MARIE FRENCH,

Plaintiff-Appellee,

v

JEFFREY RICHARD FRENCH,

Defendant-Appellant.

UNPUBLISHED

August 22, 2000

No. 218816

Washtenaw Probate Court

LC No. 97-009052-DM

Before: Fitzgerald, P.J., and Holbrook, Jr. and McDonald, JJ.

PER CURIAM.

Defendant Jeffrey French appeals by leave granted from a judgment of divorce, challenging the distribution of the marital property. We affirm.

The parties were married for sixteen years and have two children. In 1993, defendant broke his back at work. Defendant had two unsuccessful back surgeries and received worker's compensation benefits for his injury. The marriage began to deteriorate after defendant's accident and plaintiff filed for divorce in September 1997. Defendant continued to reside in the marital home until November 1997.

At trial, plaintiff testified that she assumed responsibility for payment of the bills in 1993. She testified that to pay these bills she had to take out a home equity loan, borrow against her 401(k), and borrow money from her friends and family. She testified that defendant agreed to use any settlement from the worker's compensation claim to pay off the home equity loan. Plaintiff testified that the marital debts included: a \$70,000 mortgage, a \$38,000 home equity loan, a \$2,000 Visa bill, a \$300 Hudson's bill, a \$300 Mervyns bill, and a \$2,000 revolving credit balance. With regard to the value of the marital home, plaintiff introduced an appraisal that valued the home at \$126,000, a 1997 state equalized value ("SEV") of \$120,000, and a 1998 SEV of \$133,000.

Defendant objected to the use of the appraisal and requested an opportunity to have his own independent appraisal of the marital home. The trial court determined the value of the marital home based upon the SEV assessments. Defendant testified that he redeemed his worker's compensation claim in November 1998 for \$100,000 and received \$89,900 after his attorney fees and costs were paid. Defendant testified that only \$50,000 of the worker's compensation redemption remained

because he used the money to pay his personal bills and debts. Specifically, defendant paid \$7,000 to his parents, \$4,200 for six months of rent, \$2,800 to Sears, \$7,000 for his car loan, and \$2,600 in attorney fees. Defendant stated that he believed the home was worth \$150,000. He also testified that the parties owned a computer valued at \$2,200.

The trial court found that the home was marital property and awarded it to plaintiff together with the responsibility of paying the mortgage and home equity loan. The trial court used the date defendant left the marital home as the valuation date and determined the home to be valued at \$126,500 (halfway between the 1997 and 1998 SEV assessments). The trial court also concluded that the worker's compensation redemption was marital property. Defendant was ordered to pay plaintiff \$30,000 and to pay the Visa bill, computer loan, and credit union loan.

Defendant first argues that the trial court erred by determining that the worker's compensation redemption was marital property. We disagree.

This Court has recognized that worker's compensation benefits are considered marital property when the injury occurs during the marriage. *Hagen v Hagen*, 202 Mich App 254, 259; 508 NW2d 196 (1993); *Lee v Lee*, 191 Mich App 73, 79; 477 NW2d 429 (1991); *Smith v Smith*, 113 Mich App 148, 151; 317 NW2d 324 (1982). This Court has also held that worker's compensation benefits are marital property when the injury occurred after a divorce filing. See *Evans v Evans*, 98 Mich App 328, 330; 296 NW2d 248 (1980).

Defendant attempts to distinguish between weekly or accrued worker's compensation benefits and lump sum settlement amounts. Defendant argues that lump sum settlements should not be considered marital property because they are to be used for future medical care and treatment. However, in *Hagen* this Court reached the opposite conclusion when it included \$40,000 of worker's compensation benefits as part of the marital estate. *Hagen, supra* at 257.

Defendant also compares personal injury lawsuits and worker's compensation benefits in an effort to further his contention that worker's compensation benefits should not be marital property. However, this Court has acknowledged that personal injury lawsuits can be considered marital property because they affect the earning capacity of a spouse during the marriage, *Bywater v Bywater*, 128 Mich App 396, 399-400; 340 NW2d 102 (1983), and possibly reduce "the amount of assets that may have become a part of the marital estate if the injury had not occurred." *Heilman v Heilman*, 95 Mich App 728, 731; 291 NW2d 183 (1980).

Because defendant's back injury occurred during the marriage, it was appropriate for the trial court to find that the worker's compensation redemption was marital property. Further, the property distribution made by the court was fair and equitable. Plaintiff received the home, valued at \$126,500, and became responsible for the mortgage of \$70,000 and the home equity loan of \$38,000. Plaintiff is left with \$48,500 (the equity in the home plus the \$30,000 the trial court ordered defendant to pay). Defendant is left with \$20,000 of the \$30,000 worker's compensation redemption. However, defendant testified that he spent \$39,900 to pay his own bills and debts. Therefore, defendant's share of the marital property is \$53,900. We find this division equitable, and thus conclude that the trial court

did not abuse its discretion in dividing the marital property. *Draggou v Draggou*, 223 Mich App 415, 429-430; 566 NW2d 642 (1997).

Defendant also contends that the court erred by ordering defendant to pay a portion of the marital debt without determining the validity or amount of the debt. Again, we disagree.

The court can rely on uncontroverted testimony to determine the existence and amount of marital debt. *Parrish v Parrish*, 138 Mich App 546, 669; 361 NW2d 366 (1984). A trial court's findings are sufficiently specific if a party is capable of determining the amount of the award after reviewing any stipulations and consulting the trial judge's opinion. *Nalevayko v Nalevayko*, 198 Mich App 163, 165; 497 NW2d 533 (1993).

As noted above, plaintiff testified regarding the amount of the marital debt. Defendant testified that he did not have any outstanding debt because he paid his own bills with money from the worker's compensation redemption. However, defendant did mention that the parties had a computer valued at \$2,200.

We find that the trial court properly relied on plaintiff's testimony concerning the existence and the amount of the parties' bills. Although the trial court did not set forth the specific amounts in the judgment, it listed the account numbers for each debt that defendant would be responsible to pay. The trial court ordered defendant to pay the Visa bill, the credit union loan, and the computer loan¹ for a total amount of approximately \$6,000. The trial court ordered plaintiff to pay the Hudson's bill and the Mervyns bill. After subtracting the debts each party is responsible for, defendant was left with a net of approximately \$53,900 and plaintiff was left with a net of \$47,900. Thus, we conclude that the trial court did not abuse its discretion by ordering defendant to assume some of the marital debt because the distribution of marital property was equitable.

Finally, defendant asserts that the trial court utilized an improper valuation date in determining the value of the marital home. The decision regarding the date used to value property is within the discretion of the trial court. *Thompson v Thompson*, 189 Mich App 197, 199; 472 NW2d 51 (1991). Generally, marital assets are valued at the time of trial or at the time a judgment is entered. *Byington v Byington*, 224 Mich App 103, 114; 568 NW2d 141 (1997). However, the court has discretion to utilize another date to determine the value of a marital asset. *Id.* The court can also use SEV's or the testimony of the parties themselves to determine the actual value of the marital home. *Lee, supra* at 75-76; *Curylo v Curylo*, 104 Mich App 340, 351; 304 NW2d 575 (1981).

We find no abuse of discretion in the trial court's decision to use the date plaintiff regained exclusive use of the house (November 1997) as the valuation date. In addition, we find no error in the trial court's reliance on the 1997 SEV and the 1998 SEV in determining the value of the home. The trial court specifically stated in its opinion that it found the value to be fair and reasonable because it was halfway between the two assessments. Additionally, we note that plaintiff and defendant agreed to allow the trial court to make its determination based on these two assessments.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Donald E. Holbrook, Jr.
/s/ Gary R. McDonald

¹ We recognize that the amount remaining on the computer loan is unclear. Defendant only testified that the value of the computer was \$2,200. However, we do not find an abuse of discretion because the amount will not be greater than \$2,200 and defendant can ascertain the exact amount he is required to pay since the judgment included the account number.